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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL CLARK,

Plaintiff,

v.

OFFICER GUERRERO,

Defendant.

2:09-CV-141 JCM (PAL)

ORDER

Presently before the court is plaintiff's motion for summary judgment. (Doc. #24.) On December 4, 2008, plaintiff, a pro se prisoner, filed a "civil rights complaint" in state court, in which he alleges that defendant Adrian Guerrero (incorrectly named as Officer Guerrero) violated his Eighth and Fourteenth Amendment rights by using unnecessary and excessive force. Defendant removed the case to federal court on January 21, 2009. (Doc. #1.) No discovery has occurred in the case.

Plaintiff now moves for summary judgment.

Summary judgment is appropriate when based on the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, the court finds that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The court must draw all justifiable inferences in the non-movant's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

Here, the court finds that genuine issues of fact remain regarding the amount of force used

1 against plaintiff as well as the need for such force. Further, plaintiff has failed to show that, based
2 on the evidence presented, he is entitled to judgment as a matter of law on his constitutional claims.
3 To succeed on an Eighth Amendment claim for excessive force, a plaintiff must show that the
4 officers actions were taken, not in an effort to restore discipline, but rather in a malicious or sadistic
5 manner to cause harm. See *Clement v. Gomez*, 298 F.3d 898, 903 (9th Cir. 2002). Plaintiff has not
6 made such a showing.

7 Accordingly,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff's motion for
9 summary judgment (doc. #24) be, and the same hereby is, **DENIED**.

10 DATED this 27th day of July, 2009.

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13 UNITED STATES DISTRICT JUDGE